



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Silver Spring, Maryland 20910

February 18, 2005

Brian Baird
Assistant Secretary for Ocean and Coastal Policy
The California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

SUBJECT: Review of Possible Amendments to the Channel Islands National Marine Sanctuary (Sanctuary) Designation Document Related to the Consideration of Marine Reserves, Marine Parks and Marine Conservation Areas

Dear Mr. Baird:

The National Oceanic and Atmospheric Administration's (NOAA) National Ocean Service's, National Marine Sanctuary Program (NMSP) has initiated a process to consider the establishment of a network of marine reserves, marine parks and marine conservation areas in the Sanctuary¹ pursuant to the National Marine Sanctuaries Act, 16 U.S.C. sec. 1431 *et seq.*, (NMSA). This action is being considered to ensure the long-term protection of Sanctuary resources by maintaining natural biological communities, and protecting, restoring, and enhancing natural habitats, populations, and ecological processes in the Sanctuary. The proposed action is also intended to supplement the ecosystem-based protection to Sanctuary resources afforded by the State of California's network of marine reserves and marine conservation areas. The NMSP is conducting this process to help fulfill the purposes and policies of the NMSA.

The terms of designation of a sanctuary include its geographic area, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational and esthetic value, and the types of activities that will be subject to regulation to protect those characteristics. The establishment of marine reserves, marine parks and marine conservation areas would require changes to the terms of designation, specifically the types of activities subject to regulation, for the Sanctuary. Pursuant to section 303(b)(2) of the NMSA, 16 U.S.C. sec. 1433(b)(2), the Secretary of Commerce (Secretary), through the NMSP, is consulting with appropriate Federal and State government agencies, the Pacific Fishery Management Council (PFMC), and other interested parties. Therefore, the purpose of this letter is to inform these parties that the NMSP is considering amending the terms of designation, as described below, and to solicit input on possible amendments. Please note that this is a preliminary step in the

¹ The Sanctuary is an area of approximately 1,252.5 square nautical miles (NM) and extends seaward to a distance of six NM offshore of the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock. These islands and offshore rocks are located offshore from Santa Barbara and Ventura Counties in California.



environmental review process; please see enclosure 1 – the environmental review process timeline.

The NMSP is preparing a draft environmental impact statement, and will provide the PFMC an opportunity to prepare draft Sanctuary fishing regulations for the Exclusive Economic Zone portion of the Sanctuary for any marine reserve, marine park and marine conservation area proposal, pursuant to section 304(a)(5) of the NMSA, 16 U.S.C. sec. 1434(a)(5). Interested parties will also have the opportunity to review and provide comments on the draft environmental impact statement when it is released to the public.

INTENT

As indicated above, as part of this review, the NMSP is considering certain changes to the Sanctuary's terms of designation (as defined by sec. 304(a)(4) of the NMSA; 16 U.S.C. sec. 1434(a)(4)). The potential amendments below are similar to how the NMSP has addressed the issue in the Florida Keys National Marine Sanctuary. The potential amendments are drafted to be compatible with the State of California Marine Managed Areas Improvement Act (MMIA) classifications for designating marine reserves, marine parks and marine conservation areas as established in California Public Resources Code, Section 36700 through 36710; please see enclosure 2 – the MMIA classifications. The potential amendments are intended to be compatible with the joint state/federal recommendation provided to the California Fish and Game Commission in August 2001, the Department of Fish and Game's California Environmental Quality Act Final Document of October 2002 and the state's adoption of marine protected areas within the Sanctuary implemented in April 2003. The potential amendments also reflect input from the PFMC (letter to Sanctuary dated April 24, 2003) regarding the extent of broadening Sanctuary authority:

As the Sanctuary analyzes changes in its designation document, Council members would like one of the alternatives to provide for extending Sanctuary authority only enough to allow the Sanctuary to create the proposed marine reserves, without extending authority over other types of fishing regulations. (PFMC, 2003)

POTENTIAL AMENDMENTS

Specifically, in order to establish marine reserves, marine parks and marine conservation areas that prohibit or limit fishing activities in these portions of the Sanctuary, NOAA would need to amend Article 4, Section 1, and Article 5, Section 1 of the Designation Document; please see enclosure 3 - the Channel Islands National Marine Sanctuary Designation Document.

For example, the potential change to Article 4, Scope of Regulation, Section 1 "Activities Subject to Regulation" could include adding the following activities to those that may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of its marine features and the ecological, recreational, and esthetic value of the area:

- *In a marine reserve, marine park and marine conservation area, harvesting, removing, taking, injuring, destroying, possessing, collecting, moving, or causing the loss of any living or dead organism, geological resource, cultural or historical resource or other Sanctuary resource, or attempting any of these activities.*

The potential change to Article 5, Relation to Other Regulatory Programs, is highlighted in bold.

*Section 1. Fishing. The regulation of fishing is not authorized under Article 4, **except in a marine reserve, marine park and marine conservation area.** However, fishing vessels may be regulated with respect to discharges in accordance with Article 4, Section 1, paragraph (b) and aircraft conducting kelp bed surveys below 1000 feet can be regulated in accordance with Article 4, Section 1, paragraph (e). All regulatory programs pertaining to fishing, including particularly regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Fishery and Conservation Act of 1976, 16 USC 1801 et seq., shall remain in effect. All permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. Fishing as used in this article and in Article 4 includes kelp harvesting.*

Additionally, if marine reserve, marine park or marine conservation areas are designated, minor Sanctuary boundary modifications may be desirable. Specifically, for better management, resource protection and enforcement, it may be desirable to draw boundaries of certain areas on straight lines of latitude and longitude. In some cases these straight-line boundaries would extend slightly beyond the current curved outer boundaries of the Sanctuary (e.g., the proposed Harris Pt. Marine Reserve off San Miguel Island). A preliminary range of alternatives can be viewed in the *Staff Preliminary Working Draft Environmental Document to Consider Marine Reserves and Marine Conservation Areas in the Channel Islands National Marine Sanctuary*. This document was released to the public in May 2004 and is available at http://www.cinms.nos.noaa.gov/marineres/enviro_review.html.

REVIEW CONSIDERATIONS

In responding to this letter, please take into account the following factors the Secretary is to consider at the time of designation of a Sanctuary, to the extent they are applicable to the potential changes to the Sanctuary's terms of designation as described above (16 U.S.C. sec. 1433(b)(1)):

(A) the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically

or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site;

(B) the area's historical, cultural, archeological, or paleontological significance;

(C) the present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);

(E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of the NMSA;

(F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development;

(I) the socioeconomic effects of sanctuary designation;

(J) the area's scientific value and value for monitoring the resources and natural processes that occur there;

(K) the feasibility, where appropriate, of employing innovative management approaches to protect sanctuary resources or to manage compatible uses; and

(L) the value of the area as an addition to the National Marine Sanctuary System.

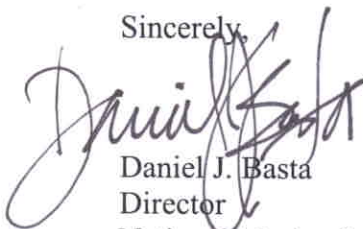
To ensure that any information, recommendations, or comments are considered in the preparation of the draft environmental impact statement, I request your response within 60 days of receipt of this letter.

A map of the Sanctuary, including the State of California marine protected areas, is enclosed for your reference; please see enclosure 4. If you have any questions regarding this process, contact Elizabeth Moore, Acting Chief, NMSP Conservation Policy and Planning Branch at (301) 713-3125x170. Please direct your response to:

Elizabeth Moore
NOAA- National Marine Sanctuary Program
1305 East-West Highway, N/ORM-6
Silver Spring, MD 20910-3281
Ph: (301) 713-3125x170
Fax: (301) 713-0404
Elizabeth.Moore@noaa.gov

We would appreciate your important input and look forward to working with you through this process.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel J. Basta", written over a horizontal line.

Daniel J. Basta
Director
National Marine Sanctuary Program

Enclosures

- Enclosure 1 – Environmental Review Process timeline
- Enclosure 2 - Excerpt from CA Marine Managed Areas Improvement Act
- Enclosure 3 - Sanctuary Designation Document
- Enclosure 4 - Sanctuary map

Enclosure 1

REVISED

Proposed Activities and Timeline -

Channel Islands National Marine Sanctuary (CINMS)

Environmental Review Process to Consider Marine Reserves

1999-2001

Channel Islands Marine Reserves Community Based Process – Joint Partnership between the State of Calif. and NOAA to consider marine reserves in state and federal waters of the CINMS

2001 – 2002

Fish and Game Commission and Department of Fish and Game State Environmental Review Process and Decision

April 2003

Channel Islands Marine Protected Areas implemented in State waters of the CINMS

2003

National Marine Sanctuary Program/CINMS Federal Environmental Review Process

- Sanctuary prepared and released in the Federal Register a Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).
- Briefed Pacific Fishery Management Council (PFMC) on Sanctuary initiation of Environmental Review Process.
- Briefed Sanctuary Advisory Council (SAC) on Sanctuary initiation of Environmental Review Process.
- Sanctuary submitted a letter to PFMC describing Environmental Review Process for discussion at April PFMC meeting.
- Sanctuary hosted public scoping meetings in Ventura and Santa Barbara Counties.
- Sanctuary briefed PFMC, State of CA, and SAC on progress.
- Sanctuary drafted *Staff Preliminary Working Draft Environmental Document to Consider Marine Reserves and Marine Conservation Areas in the Channel Islands National Marine Sanctuary (Preliminary Draft)*.

2004

- Sanctuary released to the public the *Preliminary Draft* at the May SAC and June PFMC meetings and coordinated their review.
- PFMC, SAC and public reviewed *Preliminary Draft* and submitted comments to Sanctuary.

CINMS Marine Reserves Environmental Review Process Proposed Activities and Timeline (Continued)

2005

- Sanctuary will notify PFMC, NOAA Fisheries, State of California and other entities regarding a potential change to the terms of designation of the Sanctuary (60 day response period). (i.e., the letter above).
- Sanctuary will notify PFMC of opportunity to prepare draft National Marine Sanctuaries Act (NMSA) fishing regulations for the Exclusive Economic Zone portion of the Sanctuary (NMSA regulations allow for 120 days for PFMC response). Model regulatory language and supporting environmental analysis will be provided to the PFMC.
- PFMC considers preparing draft NMSA fishing regulations and if it chooses prepares draft NMSA regulations. Sanctuary staff will assist PFMC staff as requested.
- Sanctuary releases to the public and Congress the DEIS, proposed regulations and related proposed change to the terms of designation.
- Public review of the DEIS, proposed regulations and related proposed change to the terms of designation. This will include an opportunity for public comment of at least 45 days and must include at least one public hearing if the rulemaking necessitates a change in a term of designation.
- Sanctuary prepares responses to comments.

2006

- Sanctuary drafts Final EIS, and if necessary for chosen action, drafts final regulations and revises terms of designation.
- Sanctuary releases the Final EIS by publishing a notice of availability in the Federal Register and by providing copies to interested parties.

After a 30-day “cooling off” period, the final regulations appear in the Federal Register and the Sanctuary sends the final regulations and revised terms of designation to Congress and to the governor’s office, if State waters are involved. The final regulations will take effect after the close of a review period of 45 days of continuous session of Congress. If State waters are involved, and the governor certifies that the change in terms of designation (and therefore the final regulations or portions thereof) is unacceptable, the affected final regulations will not take effect in State waters.

Enclosure 2

CALIFORNIA CODES PUBLIC RESOURCES CODE SECTION 36700-36900

Marine Managed Areas Improvement Act

36700. Six classifications for designating managed areas in the marine and estuarine environments are hereby established as described in this section, to become effective January 1, 2002. Where the term "marine" is used, it refers to both marine and estuarine areas. A geographic area may be designated under more than one classification.

(a) A "state marine reserve" is a nonterrestrial marine or estuarine area that is designated so the managing agency may achieve one or more of the following:

(1) Protect or restore rare, threatened, or endangered native plants, animals, or habitats in marine areas.

(2) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(3) Protect or restore diverse marine gene pools.

(4) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding, representative, or imperiled marine habitats or ecosystems.

(b) A "state marine park" is a nonterrestrial marine or estuarine area that is designated so the managing agency may provide opportunities for spiritual, scientific, educational, and recreational opportunities, as well as one or more of the following:

(1) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(2) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding representative or imperiled marine habitats or ecosystems.

(3) Preserve cultural objects of historical, archaeological, and scientific interest in marine areas.

(4) Preserve outstanding or unique geological features.

(c) A "state marine conservation area" is a nonterrestrial marine or estuarine area that is designated so the managing agency may achieve one or more of the following:

(1) Protect or restore rare, threatened, or endangered native plants, animals, or habitats in marine areas.

(2) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(3) Protect or restore diverse marine gene pools.

(4) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding, representative, or imperiled marine habitats or ecosystems.

(5) Preserve outstanding or unique geological features.

(6) Provide for sustainable living marine resource harvest.

36710. (a) In a state marine reserve, it is unlawful to injure, damage, take, or possess any living geological, or cultural marine resource, except under a permit or specific authorization from the managing agency for research, restoration, or monitoring purposes. While, to the extent feasible, the area shall be open to the public for managed enjoyment and study, the area shall be maintained to the extent practicable in an undisturbed and unpolluted state. Access and use for activities including, but not limited to, walking, swimming, boating, and diving may be restricted to protect marine resources. Research, restoration, and monitoring may be permitted by the managing agency. Educational activities and other forms of nonconsumptive human use may be permitted by the designating entity or managing agency in a manner consistent with the protection of all marine resources.

(b) In a state marine park, it is unlawful to injure, damage, take, or possess any living or nonliving marine resource for commercial exploitation purposes. Any human use that would compromise protection of the species of interest, natural community or habitat, or geological, cultural, or recreational features, may be restricted by the designating entity or managing agency. All other uses are allowed, including scientific collection with a permit, research, monitoring, and public recreation, including recreational harvest, unless otherwise restricted. Public use, enjoyment, and education are encouraged, in a manner consistent with protecting resource values.

(c) In a state marine conservation area, it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for commercial or recreational purposes, or a combination of commercial and recreational purposes, that the designating entity or managing agency determines would compromise protection of the species of interest, natural community, habitat, or geological features. The designating entity or managing agency may permit research, education, and recreational activities, and certain commercial and recreational harvest of marine resources.

Enclosure 3

65200 Federal Register / Vol. 45 No. 193 / Thursday, October 2, 1980 / Rules and Regulations

Final Designation Document

Designation of the Channel Islands National Marine Sanctuary

Preamble

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972. Pub. L. 92-532 (the Act) the waters surrounding the northern Channel Islands and Santa Barbara Island are hereby designated a Marine Sanctuary for the purpose of preserving and protecting this unique and fragile ecological community.

Article 1. Effect of Designation

Within the area designated as the Channel Islands National Marine Sanctuary (the Sanctuary), described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of this Designation lists those activities which may require regulation but the listing of any activity does not by itself prohibit or restrict it.

Article 2. Description of the Area

The Sanctuary consists of an area of the waters off the coast of California, of approximately 1252.5 square nautical miles (nm), adjacent to the northern Channel Islands and Santa Barbara Island seaward to a distance of 6 nm. The precise boundaries are defined by regulation.

Article 3. Characteristics of the Area That Give it Particular Value

The Sanctuary is located in an area of upwelling and in a transition zone between the cold waters of the California Current and the warmer Southern California Countercurrent. Consequently, the Sanctuary contains an exceptionally rich and diverse biota, including 30 species of marine mammals and several endangered species of marine mammals and sea birds. The Sanctuary will provide recreational experiences and scientific research opportunities and generally will have special value as an ecological, recreational, and esthetic resource.

Article 4. Scope of Regulation

Section 1. *Activities Subject to Regulation.* In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of its marine features and the ecological, recreational, and esthetic value of the area:

- a. Hydrocarbon operations
- b. Discharging or depositing any substance
- c. Dredging or alteration of, or construction on, the seabed
- d. Navigation of vessels except fishing vessels or vessels traveling within a Vessel Traffic Separation Scheme or Port Access Route designated by the Coast Guard outside of 1 nm from any island
- e. Disturbing marine mammals or birds by overflights below 1000 feet
- f. Removing or otherwise deliberately harming cultural or historical resources

Section 2. *Consistency with International Law.* The regulations governing the activities listed in Section 1 of this article apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law including treaties and international agreements to which the United States is signatory.

Section 3. *Emergency Regulations.* Where essential to prevent immediate, serious and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this article would be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1. *Fishing.* The regulation of fishing is not authorized under Article 4. However, fishing vessels may be regulated with respect to discharges in accordance with Article 4, Section 1, paragraph (b) and aircraft conducting kelp bed surveys below 1000 feet can be regulated in accordance with Article 4, Section 1, paragraph (e). All regulatory programs pertaining to fishing, including particularly regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Fishery and Conservation Act of 1976, 16 USC 1801 et seq., shall remain in effect. All permits, licenses and other authorizations issues pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. Fishing as used in this article and in Article 4 includes kelp harvesting.

Section 2. *Defense Activities.* The regulation of those activities listed in Article 4 shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practicable.

Section 3. *Other Programs.* All applicable regulatory programs shall remain in effect and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. The Sanctuary regulations set forth any necessary certification procedures.

Article 6. Alterations to this Designation

This designation can be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the Pacific Fishery Management Council, and approval by the President of the United States.

[End of Designation Document]

Only those articles listed in Article 4 are subject to regulation in the Sanctuary. Before any additional activities may be regulated, the Designation must be amended through the entire designation procedure including public hearings and approval by the President.

Dated: September 28, 1980.

Michael Glazer,

Assistant Administrator for Coastal Zone Management

Enclosure 4 – Map of the Channel Islands National Marine Sanctuary including State Marine Protected Areas.

